



## REQUEST FOR PROPOSAL (RFP)

(For Low-Valued Services)

**CONSULTANCY SERVICES - DEVELOPMENT OF ALTERNATIVE DISPUTES RESOLUTION FRAMEWORK.**

|                   |                                                                                                                                                                                     |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>To Bidders</b> | <b>DATE: 20/07/2021</b>                                                                                                                                                             |
|                   | <b>REFERENCE: RFP//013/2021 –<br/>Consultancy firm to support the office of<br/>data protection commissioner in<br/>development of Alternative Dispute<br/>Resolution Framework</b> |

Dear Sir / Madam,

We kindly request you to submit your Proposal to **support the office of data protection commissioner in development of Alternative Dispute Resolution Framework.**

Please be guided by the form attached hereto as Annex 2, in preparing your Proposal.

In the course of preparing and submitting your proposal, it shall remain your responsibility to ensure that it is submitted into the system before the deadline. The system will automatically block and not accept any bid after the deadline. Kindly ensure that supporting documents required are signed and in the .pdf format, and free from any virus or corrupted files.

It shall remain your responsibility to ensure that your quotation is submitted on or before the deadline indicated by UNDP in the E-Tendering system. Bids must be submitted in the online E-Tendering system in the following link: <https://etendering.partneragencies.org> using your username and password. If you have not registered in the system before, you can register now by logging in using

username: event. guest  
password: why2change

and follow the registration steps as specified in the system user guide. Your proposal must be expressed in English, and valid for a minimum period of 120 days from the bid closing date. You are kindly requested to indicate whether your company intends to submit a Proposal by clicking on “Accept Invitation”.

Services proposed shall be reviewed and evaluated based on completeness and compliance of the Proposal and responsiveness with the requirements of the RFP and all other annexes providing details of UNDP requirements.

The Proposal that complies with all of the requirements, meets all the evaluation criteria and offers the best value for money shall be selected and awarded the contract.

Any offer that does not meet the requirements shall be rejected. Any discrepancy between the unit price and the total price shall be re-computed by UNDP, and the unit price shall prevail, and the total price shall be corrected. If the Service Provider does not accept the final price based on UNDP's re-computation and correction of errors, its Proposal will be rejected.

No price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted by UNDP after it has received the Proposal. At the time of Award of Contract or Purchase Order, UNDP reserves the right to vary (increase or decrease) the quantity of services and/or goods, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

Any Contract or Purchase Order that will be issued as a result of this RFP shall be subject to the General Terms and Conditions attached hereto. The mere act of submission of a Proposal implies that the Service Provider accepts without question the General Terms and Conditions of UNDP, herein attached as Annex 3.

Please be advised that UNDP is not bound to accept any Proposal, nor award a contract or Purchase Order, nor be responsible for any costs associated with a Service Providers preparation and submission of a Proposal, regardless of the outcome or the manner of conducting the selection process.

UNDP's vendor protest procedure is intended to afford an opportunity to appeal for persons or firms not awarded a Purchase Order or Contract in a competitive procurement process. In the event that you believe you have not been fairly treated, you can find detailed information about vendor protest procedures in the following link:

<http://www.undp.org/content/undp/en/home/operations/procurement/protestandsanctions/>

UNDP encourages every prospective Service Provider to prevent and avoid conflicts of interest, by disclosing to UNDP if you, or any of your affiliates or personnel, were involved in the preparation of the requirements, design, cost estimates, and other information used in this RFP. UNDP implements a zero tolerance on fraud and other proscribed practices, and is committed to preventing, identifying and addressing all such acts and practices against UNDP, as well as third parties involved in UNDP activities. UNDP expects its Service Providers to adhere to the UN Supplier Code of Conduct found in this link: [http://www.un.org/depts/ptd/pdf/conduct\\_english.pdf](http://www.un.org/depts/ptd/pdf/conduct_english.pdf)

Please be advised that, if selected, you will be required to sign a UNDP contract and work under UNDP contract terms and agreement. UNDP will not sign any external contracts or agreements other than the UNDP contract.

Thank you and we look forward to receiving your Proposal.

Yours sincerely,

Taye Amssalu

Deputy Resident Representative (Operations)

## Annex 1

### Description of Requirements

|                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Context of the Requirement                                       | To support the office of data protection commissioner in development of Alternative Dispute Resolution Framework                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Implementing Partner of UNDP                                     | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Brief Description of the Required Services                       | <ol style="list-style-type: none"> <li>1. Develop detailed Alternative Dispute Resolution (<b>ADR</b>) frameworks for Mediation, Conciliation, Negotiation and Arbitration in accordance with the Data Protection Act, 2019 and any subsidiary legislation, and any other laws of Kenya governing ADR.</li> <li>2. Provide an analysis of Mediation, Conciliation, Negotiation and Arbitration, and develop simplified draft guidance notes for parties to a dispute.</li> <li>3. Provide detailed analysis on matters to be considered by the Office of data protection commissioner, including but not limited to third party funding for Alternative Dispute Processes, security for costs and evidentiary requirements.</li> </ol>                                                                                                                                     |
| List and Description of Expected Outputs to be Delivered         | <ol style="list-style-type: none"> <li>1. Concept paper that defines the processes of Mediation, Conciliation, Arbitration and Negotiation of Disputes pursuant to the Data Protection Act, 2019.</li> <li>2. Detailed ADR frameworks for each of the ADR processes identified above.</li> <li>3. Detailed Standard Operating Procedures to be adopted for Alternative Dispute Resolution</li> <li>4. Detailed report containing any other consideration/procedures relating to the implementation of ADR, gap analysis of current legal framework and recommendations.</li> <li>5. Bidding documents for any items to be procured in the implementation of the ADR processes.</li> <li>6. Develop a document retention policy.</li> <li>7. Develop simplified draft guidance notes on ADR processes.</li> <li>8. Detailed monitoring and evaluation framework.</li> </ol> |
| Person to Supervise the work/Performance of the Service Provider | The Consulting firm will work with the Data Protection Commissioner and UNDP in undertaking the assignment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Frequency of Reporting                                           | As agreed during inception meeting                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Progress Reporting Requirements                                  | Weekly                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

|                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Location of work                                                                          | <input type="checkbox"/> Exact Address/es <i>[pls. specify]</i><br><input checked="" type="checkbox"/> At Contractor's Location and includes travel to Tana River County.                                                                                                                                                                                                                           |
| Expected duration of work                                                                 | 60 working days                                                                                                                                                                                                                                                                                                                                                                                     |
| Target start date                                                                         | 17 August 2021                                                                                                                                                                                                                                                                                                                                                                                      |
| Latest completion date                                                                    | 08 November 2021                                                                                                                                                                                                                                                                                                                                                                                    |
| Travels Expected                                                                          | No travels expected.                                                                                                                                                                                                                                                                                                                                                                                |
| Special Security Requirements                                                             | <input type="checkbox"/> Security Clearance from UN prior to travelling<br><input type="checkbox"/> Completion of UN's Basic and Advanced Security Training<br><input type="checkbox"/> Comprehensive Travel Insurance<br><input type="checkbox"/> Others <i>[pls. specify]</i>                                                                                                                     |
| Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)            | None for this assignment<br><input type="checkbox"/> Office space and facilities<br><input type="checkbox"/> Land Transportation<br><input type="checkbox"/> Others <i>[pls. specify]</i>                                                                                                                                                                                                           |
| Implementation Schedule indicating breakdown and timing of activities/sub-activities      | <input type="checkbox"/> Required<br><input checked="" type="checkbox"/> Not Required                                                                                                                                                                                                                                                                                                               |
| Names and curriculum vitae of individuals who will be involved in completing the services | <input checked="" type="checkbox"/> Required as per the Terms of Reference<br>Ability to communicate effectively in written and spoken English.<br>Contacts of three recent clients for whom the vendor delivered services comparable with the specifications listed above.<br><br><input type="checkbox"/> Not Required                                                                            |
| Currency of Proposal                                                                      | <input type="checkbox"/> United States Dollars<br><input checked="" type="checkbox"/> Local Currency (KSH)<br><input type="checkbox"/> Euro                                                                                                                                                                                                                                                         |
| Value Added Tax on Price Proposal                                                         | <input type="checkbox"/> must be inclusive of VAT and other applicable indirect taxes<br><input checked="" type="checkbox"/> must be exclusive of VAT and other applicable indirect taxes                                                                                                                                                                                                           |
| Validity Period of Proposals ( <i>Counting for the last day of submission of quotes</i> ) | <input type="checkbox"/> 60 days<br><input type="checkbox"/> 90 days<br><input checked="" type="checkbox"/> 120 days<br><br>In exceptional circumstances, UNDP may request the Proposer to extend the validity of the Proposal beyond what has been initially indicated in this RFP. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Proposal. |
| Partial Quotes                                                                            | <input checked="" type="checkbox"/> Not permitted                                                                                                                                                                                                                                                                                                                                                   |

|                                                                                                              | <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                           |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
|--------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|-----------------------|--------------------------------|-------------------------------------------|-----------------------|-----------------------------|-----------------------------------------------------------|------|-----------------------------|---------------------|------|-----------------------------|-------------------------------------|------|
| Payment Terms                                                                                                | <table border="1"> <thead> <tr> <th>Installment of Payment/ Period</th> <th>Deliverables or Documents to be Delivered</th> <th>Percentage of Payment</th> </tr> </thead> <tbody> <tr> <td>1<sup>st</sup> Installment</td> <td>Submission of an inception report including plan of work.</td> <td>20 %</td> </tr> <tr> <td>2<sup>nd</sup> Installment</td> <td>Draft ADR Framework</td> <td>40 %</td> </tr> <tr> <td>3<sup>rd</sup> Installment</td> <td>Final version of the ADR Framework.</td> <td>40 %</td> </tr> </tbody> </table>                                            |                                                           |                       | Installment of Payment/ Period | Deliverables or Documents to be Delivered | Percentage of Payment | 1 <sup>st</sup> Installment | Submission of an inception report including plan of work. | 20 % | 2 <sup>nd</sup> Installment | Draft ADR Framework | 40 % | 3 <sup>rd</sup> Installment | Final version of the ADR Framework. | 40 % |
|                                                                                                              | Installment of Payment/ Period                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Deliverables or Documents to be Delivered                 | Percentage of Payment |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
|                                                                                                              | 1 <sup>st</sup> Installment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Submission of an inception report including plan of work. | 20 %                  |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
|                                                                                                              | 2 <sup>nd</sup> Installment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Draft ADR Framework                                       | 40 %                  |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
| 3 <sup>rd</sup> Installment                                                                                  | Final version of the ADR Framework.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 40 %                                                      |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
| Is Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment | UNDP<br>Mr. Dan Juma,<br>Team Leader, Governance and Inclusive Growth.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                           |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
| Type of Contract to be Signed                                                                                | <input checked="" type="checkbox"/> Purchase Order<br><input type="checkbox"/> Institutional Contract<br><input checked="" type="checkbox"/> Contract for Professional Services<br><input type="checkbox"/> Long-Term Agreement.                                                                                                                                                                                                                                                                                                                                                  |                                                           |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
| Criteria for Contract Award                                                                                  | <input type="checkbox"/> Lowest Price Quote among technically responsive offers<br><input checked="" type="checkbox"/> Highest Combined Score (based on the 70% technical offer and 30% price weight distribution)<br><input checked="" type="checkbox"/> Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criterion and cannot be deleted regardless of the nature of services required. Non acceptance of the GTC may be grounds for the rejection of the Proposal.                                                                 |                                                           |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
| Criteria for the Assessment of Proposal                                                                      | <p><b><u>Technical Proposal (70%)</u></b></p> <input checked="" type="checkbox"/> Capacity to enter the contract 200pts<br><input checked="" type="checkbox"/> Proposed workplan and approach 400pts<br><input checked="" type="checkbox"/> Demonstrates relevant experience in Arbitration and other forms of ADR, Constitutional and Judicial review, Employment and Labour Litigation, Commercial Law or Consultancies/ Advise on any of the above areas. 300pts<br><input checked="" type="checkbox"/> To provide proof of good standing with the Law Society of Kenya 100pts |                                                           |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
|                                                                                                              | <p><b><u>Financial Proposal (30%)</u></b></p> To be computed as a ratio of the Proposal's offer to the lowest price among the proposals received by UNDP.                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                           |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |
| UNDP will award the contract to:                                                                             | <input checked="" type="checkbox"/> One and only one Service Provider<br><input type="checkbox"/> One or more Service Providers, depending on the following factors:                                                                                                                                                                                                                                                                                                                                                                                                              |                                                           |                       |                                |                                           |                       |                             |                                                           |      |                             |                     |      |                             |                                     |      |

|                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Annexes to this RFP                                             | <input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2)<br><input checked="" type="checkbox"/> General Terms and Conditions / Special Conditions (Annex 3)<br><input type="checkbox"/> Detailed TOR <input type="checkbox"/> Others                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Contact Person for Inquiries (Written inquiries only)           | <p>For technical related issues contact:<br/> <b><a href="mailto:bokayo.sora@undp.org">bokayo.sora@undp.org</a></b><br/> UNDP Programme Officer – Governance and -Inclusive Growth</p> <p>For how to apply questions contact: <b>UNDP Kenya Procurement Unit</b><br/> <b><a href="mailto:Undp.kenya.procurement@undp.org">Undp.kenya.procurement@undp.org</a></b></p> <p>Any delay in UNDP’s response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.</p>                                                                                                                                                                                |
| Allowable Manner of Submitting Proposals                        | <input checked="" type="checkbox"/> Electronic submission of bids through UNDP e-tendering portal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Conditions and Procedures for electronic submission and opening | <input checked="" type="checkbox"/> Free from virus<br><input checked="" type="checkbox"/> <b>Format:</b> PDF files only<br><b>Technical and financial proposals should be separated, and <u>Financial Proposals password protected</u>. The firm that meets the 70% score in the technical evaluation will be further evaluated financially. The firm with the highest combined score (based on the 70% technical offer and 30% price weight distribution will be awarded contract</b><br><br>Password for the financial proposals must not be provided to UNDP until the date and time requested. This request will be to firms that meet the 70% score in the technical evaluation.<br><input checked="" type="checkbox"/> <b>Digital Certification/Signature:</b> Required |
| Deadline of Submission                                          | <b>Monday, 02 August 2021 by 5.00 P.M (GMT+3.00)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Other Information                                               | The successful vendor will be issued with a Purchase Order (PO) after signing the contract to trigger payments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

## Annex 2

### FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL<sup>1</sup>

*(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery<sup>2</sup>)*

Nairobi  
July 20, 2021

To: The Deputy Country Director (Operations)  
UNDP Kenya  
UN Complex Gigiri, Block N, Level 3  
P.O. Box 30218-00100,  
Nairobi, Kenya

Dear Sir/Madam:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the RFP dated 7/20/2021, and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions:

#### A. **Qualifications of the Service Provider**

*The Service Provider must describe and explain how and why they are the best entity that can deliver the requirements of UNDP by indicating the following:*

- a) Profile – describing the nature of business, field of expertise, licenses, certifications, accreditations;*
- b) Business Licenses – Registration Papers, Tax Payment Certification, etc.*
- c) Latest Audited Financial Statement – income statement and balance sheet to indicate Its financial stability, liquidity, credit standing, and market reputation, etc. ;*
- d) Track Record – list of clients for similar services as those required by UNDP, indicating description of contract scope, contract duration, contract value, contact references;*
- e) Certificates and Accreditation – including Quality Certificates, Patent Registrations, Environmental Sustainability Certificates, etc.*
- f) Written Self-Declaration that the company is not in the UN Security Council 1267/1989 List, UN Procurement Division List or Other UN Ineligibility List.*

#### B. **Proposed Methodology for the Completion of Services**

*The Service Provider must describe how it will address/deliver the demands of the RFP; providing a detailed description of the essential performance characteristics, reporting conditions and quality assurance mechanisms that will be put in place, while demonstrating that the proposed methodology will be appropriate to the local conditions and context of the work.*

<sup>1</sup> This serves as a guide to the Service Provider in preparing the Proposal.

<sup>2</sup> Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes

C. **Qualifications of Key Personnel/Project Focal Point**

*If required by the RFP, the Service Provider must provide:*

- a) *Names and qualifications of the key personnel that will perform the services indicating who is Team Leader, who are supporting, etc.;*
- b) *CVs demonstrating qualifications must be submitted if required by the RFP; and*
- c) *Written confirmation from each personnel that they are available for the entire duration of the contract.*

D. **Cost Breakdown per Deliverable\***

| <b>Installment of Payment/<br/>Period</b> | <b>Deliverables or Documents to be Delivered</b>          | <b>Percentage of Payment</b> |
|-------------------------------------------|-----------------------------------------------------------|------------------------------|
| 1 <sup>st</sup> Installment               | Submission of an inception report including plan of work. | 20 %                         |
| 2 <sup>nd</sup> Installment               | Draft ADR Framework                                       | 40 %                         |
| 3 <sup>rd</sup> Installment               | Final version of the ADR Framework.                       | 40 %                         |

*\*This shall be the basis of the payment tranches*

E. **Cost Breakdown by Cost Component [*This is only an Example*]:**

| <b>Description of Activity</b>    | <b>Remuneration per Unit of Time</b> | <b>Total Period of Engagement</b> | <b>No. of Personnel</b> | <b>Total Rate</b> |
|-----------------------------------|--------------------------------------|-----------------------------------|-------------------------|-------------------|
| <b>I. Personnel Services</b>      |                                      |                                   |                         |                   |
| 1. Services from Home Office      |                                      |                                   |                         |                   |
| a. Expertise 1                    |                                      |                                   |                         |                   |
| b. Expertise 2                    |                                      |                                   |                         |                   |
| 2. Services from Field Offices    |                                      |                                   |                         |                   |
| a. Expertise 1                    |                                      |                                   |                         |                   |
| b. Expertise 2                    |                                      |                                   |                         |                   |
| 3. Services from Overseas         |                                      |                                   |                         |                   |
| a. Expertise 1                    |                                      |                                   |                         |                   |
| b. Expertise 2                    |                                      |                                   |                         |                   |
| <b>II. Out of Pocket Expenses</b> |                                      |                                   |                         |                   |
| 1. Travel Costs                   |                                      |                                   |                         |                   |
| 2. Daily Allowance                |                                      |                                   |                         |                   |
| 3. Communications                 |                                      |                                   |                         |                   |
| 4. Reproduction                   |                                      |                                   |                         |                   |
| 5. Equipment Lease                |                                      |                                   |                         |                   |
| 6. Others                         |                                      |                                   |                         |                   |
| <b>III. Other Related Costs</b>   |                                      |                                   |                         |                   |

*[Name and Signature of the Service Provider's  
Authorized Person]*

*[Designation]*

*[Date]*



## **TERMS OF REFERENCE**

### **CONSULTANCY –DEVELOPMENT OF ALTERNATIVE DISPUTES RESOLUTION FRAMEWORK.**

The Kenya Country Office (CO) would like to procure the services of a consultancy firm to support the office of data protection commissioner in development of Alternative Dispute Resolution Framework as described below.

#### **Background**

The use of Information and Communication Technology (ICT) is rapidly emerging as a crucial tool in the provision of services. In the current COVID-19 pandemic period, ICT has played a significant role in ensuring continuity of services provision for instance remote teaching & learning and remote working. With the numerous benefits to be gained, both in the formal and informal sectors, the public is adopting ICT in everyday duties in the workplaces and for service provision and access. This increase has led to significant challenges associated with protecting the data of the most vulnerable who join the technology space without sufficient knowledge. Moreover, the continuing emergence, adoption and reliance of new ICT tools for continuity services delivery by the public and private institutions has brought about the need to provide relevant training especially with respect to data protection.

The government of Kenya has identified the Information, Communications and Technology (ICT) sector as a key economic pillar which is projected to contribute 10% of GDP to the economy. As a means of accelerating this, the country developed the Digital Economy Blueprint and Strategy in 2019 aimed at mainstreaming the sector. The Key pillars of the Digital Economy Blueprint and Strategy are Digital Government, Digital Business, Infrastructure, Innovation-Driven Entrepreneurship and Digital Skills and Values. Furthermore, the aim of the Digital Economy Blueprint is to digitally empowering citizens living in a digitally enabled society.

Cognizant of the need to effective support and protect the players' right in the ICT, the Government through the Ministry of ICT, Innovations and Youth Affairs enacted the Data Protection Act 2019 that effectively established the Office of the Data Protection Commissioner in November 2020.

#### **Development of Alternative Dispute Resolution Framework**

The Data Protection Act, 2019 Section (9c) provides that the data commissioner to facilitate reconciliation, mediation and negotiation on disputes arising from data subjects.

NIIMS is a national programme for the establishment of an integrated biometric population database that will be the “single source of truth” on persons' identity data.

The objective is to develop a national integrated population database “as the single source of truth” of information on persons' identity for all citizens and foreign nationals residing in Kenya.

Huduma Namba will integrate and harmonize all persons' identity data across all MDAs and all other government registration numbers will be accessed through the Huduma Namba which will be the "one stop shop" on population identity data.

The office of the Data Protection Commissioner is currently involved in facilitating the delivery of NIIMs or Huduma Namba as demonstrated below:

- a. Huduma Namba roll out – the establishment and operationalization of the office of the data protection commissioner was ruled by the High Court in 2020 as one of the conditions the government should ensure, prior to full roll out of the Huduma Namba Programme. The development and adoption of the Alternative Dispute Resolution will facilitate/strengthen complaints and dispute Management.
- b. Pending court case on Huduma Namba Programme: The Government has been sued in court by KATIBA Institute in a case challenging roll out of Huduma Namba. The data commissioner has been listed as an interested party in this matter. Huduma Namba is one of the legacy projects which the government is fast tracking its implementation by ensuring adequate resource allocation, coordinated oversight and tracking implementation timelines. The Huduma Namba once fully operational will enhance the legal identity for all persons living in the country. The development of an Alternative Dispute Resolution Framework will demonstrate the office preparedness to facilitate out of court settlement of disputes including the foregoing court case.
- c. The proposed alternative disputes resolution framework will further facilitate fast and efficient resolution of any disputes which may arise during the implementation of Huduma Namba Phase II.
- d. The draft data protection regulations, obligates the data commissioner to put in place mechanism to facilitate Alternative Disputes Resolution

### **Objective of Alternative Dispute Resolution Framework**

The main objectives of the alternative disputes' resolution framework are: -

- (a) Develop detailed Alternative Dispute Resolution (**ADR**) frameworks for Mediation, Conciliation, Negotiation and Arbitration in accordance with the Data Protection Act, 2019 and any subsidiary legislation, and any other laws of Kenya governing ADR.
- (b) Provide an analysis of Mediation, Conciliation, Negotiation and Arbitration, and develop simplified draft guidance notes for parties to a dispute.
- (c) Provide detailed analysis on matters to be considered by the Office of data protection commissioner, including but not limited to third party funding for Alternative Dispute Processes, security for costs and evidentiary requirements.

## Scope of the Assignment

The consultant will undertake the following;

1. Prepare four separate detailed frameworks for each of the identified ADR process addressing, at a minimum, the following:
  - (a) Outline procedures for alternative dispute resolution processes.
  - (b) Appointment criteria for alternative dispute resolution facilitator, determiner, resolver, as the case may be.
  - (c) Rules to be adopted in the case of agreement between parties and rules for adoption where parties do not agree to set rules, including any agreements necessary to give effect to the rules. The rules must take into account and detail hearing processes, evidentiary rules, place of hearing, conduct of relevant ADR process, and any other matters pertinent to the relevant ADR process.
  - (d) Develop process timelines and limits for the relevant ADR process.
  - (e) Determine language of proceeding, provision of translation of documents or interpretations mechanism in oral presentations.
  - (f) Administrative or technical services that may be required or and/or technology requirements to be procured.
  - (g) Develop a written communications policy.
  - (h) Develop a guide and framework for ADR Costs addressing matters such as deposits, management of costs, awarding of costs and any other matter relevant to be considered relating to costs of ADR and of the facilitator, determiner, or resolver.
  - (i) Address the requirements regarding filing or delivering of award and enforcing an award.
  - (j) Provision for virtual proceedings and rules attaching to conduct of virtual proceedings.
2. Prepare any terms of reference and bidding documents as required by procurement laws and the Office's Procurement procedures for implementation of the ADR processes by the Office.
3. Define any other considerations or procedures required for proper implementation of the ADR processes, including carrying out a review of the current Data Protection laws (including draft subsidiary documents) to identify any gaps or any hinderances contained in the law that need to be addressed, amended, or included so as to ensure the successful implementation of the ADR processes (Gap analysis and recommendations).
4. Develop standard operating procedures and internal manuals for each identified ADR process.
5. Develop document retention policy.
6. Define the performance measures and the performance management process.

7. Develop simplified draft guidance notes for parties to a dispute explaining each ADR process including the benefits, obligations and expectations, and process.

### Key Deliverables (Outputs)

The Consultant is expected to deliver the following key outputs:

1. Concept paper that defines the processes of Mediation, Conciliation, Arbitration and Negotiation of Disputes pursuant to the Data Protection Act, 2019.
2. Detailed ADR frameworks for each of the ADR processes identified above.
3. Detailed Standard Operating Procedures to be adopted for Alternative Dispute Resolution
4. Detailed report containing any other consideration/procedures relating to the implementation of ADR, gap analysis of current legal framework and recommendations.
5. Bidding documents for any items to be procured in the implementation of the ADR processes.
6. Develop a document retention policy.
7. Develop simplified draft guidance notes on ADR processes.
8. Detailed monitoring and evaluation framework.

### Qualifications Criteria and Requirements

The successful firm must fulfil the following criteria and qualifications.

|    | <b>Subject</b>                       | <b>Criteria</b>                                                                                         | <b>Mandatory Requirement</b>                                                                                                                                     |
|----|--------------------------------------|---------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Legal Capacity                       | To determine capacity to enter into Contract                                                            | Must submit a Copy of Certificate of incorporation/ Registration                                                                                                 |
| 2. | Ownership Structure & tax compliance | Confirmation of details of Directors and shareholders<br>Proof the bidder has fulfilled tax obligations | Must submit a copy of Company's CR12.<br>Must attach copies of National IDs/ Passports for directors<br>Must submit a Copy of a valid tax compliance certificate |
| 3. | Business information                 | To provide details of business ownership and structure                                                  | Must Provide details of fixed location and Premises, organizational structure, CVs of the firm's partners and associates and respective academic certificates    |
| 4. | Registration with Relevant Authority | Evidence that the bidder meets Statutory Requirements                                                   | Copies of admission certificates and current practicing certificates of the proprietor, partners, and associates                                                 |
| 5. | Practicing Certificates              | To Provide Practicing Certificates of the Partners and Associates in the firm                           | Must submit copy of Practicing Certificates of the Partners and Associates in the firm (2021) Or Payment Receipt In lieu of Certificate.                         |
| 6. | Good Standing                        | To provide proof of good standing with the Law Society of Kenya                                         | Submit a letter of good standing per advocate of the law firm from the Law Society of Kenya                                                                      |

|    |                            |                                                                                                                                                                                                                   |                                                                        |
|----|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 7. | Nature of Assignments      | To demonstrate relevant experience in Arbitration and other forms of ADR, Constitutional and Judicial review, Employment and Labour Litigation, Commercial Law or Consultancies/ Advise on any of the above areas | Must Provide company profile detailing areas of experience             |
| 8  | Government work experience | To demonstrate relevant experience working with Government Agencies                                                                                                                                               | Must provide list/ letters of reference from other government agencies |

### Duration of the assignment

The duration of this consultancy assignment shall be 60 working days from the date of signing the Contract document.

### Payment schedule

| Installment of Payment/ Period | Deliverables or Documents to be Delivered                 | Percentage of Payment |
|--------------------------------|-----------------------------------------------------------|-----------------------|
| 1 <sup>st</sup> Installment    | Submission of an inception report including plan of work. | 20 %                  |
| 2 <sup>nd</sup> Installment    | Draft ADR Framework                                       | 40 %                  |
| 3 <sup>rd</sup> Installment    | Final version of the ADR Framework.                       | 40 %                  |

| <b>Technical Competence (based on CV and Proposal)</b>                                                                                                                                                                              |                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| <b>Criteria a.</b> To determine capacity to enter into contract.                                                                                                                                                                    | 200 pts         |
| <b>Criteria b:</b> Proposed workplan and approach.                                                                                                                                                                                  | 400 pts         |
| <b>Criteria c.</b> Demonstrates relevant experience in Arbitration and other forms of ADR, Constitutional and Judicial review, Employment and Labour Litigation, Commercial Law or Consultancies/ Advise on any of the above areas. | 300 pts         |
| <b>Criteria d.</b> To provide proof of good standing with the Law Society of Kenya                                                                                                                                                  | 100 pts         |
| <b>Total</b>                                                                                                                                                                                                                        | <b>1000 pts</b> |

## Technical Evaluation Criteria

### Summary

| Summary of Technical Proposal Evaluation Forms |                                                                                                                                                                                                                                     | Score Weight | Points Obtainable | Company / Other Entity |   |   |   |   |
|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------------|------------------------|---|---|---|---|
|                                                |                                                                                                                                                                                                                                     |              |                   | A                      | B | C | D | E |
| 1.                                             | <b>Criteria a.</b> To determine capacity to enter into contract.                                                                                                                                                                    | 20%          | 200               |                        |   |   |   |   |
| 2.                                             | <b>Criteria b:</b> Proposed workplan and approach.                                                                                                                                                                                  | 40%          | 400               |                        |   |   |   |   |
| 3.                                             | <b>Criteria c.</b> Demonstrates relevant experience in Arbitration and other forms of ADR, Constitutional and Judicial review, Employment and Labour Litigation, Commercial Law or Consultancies/ Advise on any of the above areas. | 30%          | 300               |                        |   |   |   |   |
| 4.                                             | <b>Criteria d.</b> To provide proof of good standing with the Law Society of Kenya                                                                                                                                                  | 10%          | 100               |                        |   |   |   |   |
| <b>Total</b>                                   |                                                                                                                                                                                                                                     |              | <b>1000</b>       |                        |   |   |   |   |

### Technical Evaluation Criteria a: To determine capacity to enter into contract.

| Summary of Technical Proposal Evaluation Forms |                                                                                                  | Score Weight | Company / Other Entity |   |   |   |   |
|------------------------------------------------|--------------------------------------------------------------------------------------------------|--------------|------------------------|---|---|---|---|
|                                                |                                                                                                  |              | A                      | B | C | D | E |
| 1.                                             | To submit certificate of incorporation of the firm                                               | 50           |                        |   |   |   |   |
| 2.                                             | CVs of the firm's partners and associates/academic certificates in relation to the area of work. | 100          |                        |   |   |   |   |
| 3.                                             | Current practicing certificates of partners and associates (2021)                                | 50           |                        |   |   |   |   |
| Total                                          |                                                                                                  |              |                        |   |   |   |   |

### Technical Evaluation Criteria b: Proposed workplan and approach.

| Summary of Technical Proposal Evaluation Forms |                                                                             | Score | Company / Other Entity |   |   |   |   |
|------------------------------------------------|-----------------------------------------------------------------------------|-------|------------------------|---|---|---|---|
|                                                |                                                                             |       | A                      | B | C | D | E |
| 1.                                             | To what degree does the firm understand the task?                           | 50    |                        |   |   |   |   |
| 2.                                             | Have the important aspects of the task been addressed in sufficient detail? | 50    |                        |   |   |   |   |
| 3.                                             | Is the scope of task well defined and does it correspond to the TOR?        | 150   |                        |   |   |   |   |

|              |                                                                                                                                                   |            |  |  |  |  |  |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|--|--|--|--|
| 4.           | Is the presentation clear and is the sequence of activities and the planning logical, realistic and promise efficient implementation of the task? | 150        |  |  |  |  |  |
| <b>Total</b> |                                                                                                                                                   | <b>400</b> |  |  |  |  |  |

### Technical Evaluation Criteria c: Firm experience

| Technical Proposal Evaluation Form 1                 |                                                                                                                                                                                                          | Scores     | Company / Other Entity |   |   |   |   |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------------------|---|---|---|---|
|                                                      |                                                                                                                                                                                                          |            | A                      | B | C | D | E |
| Expertise of firm / organisation submitting proposal |                                                                                                                                                                                                          |            |                        |   |   |   |   |
| 1                                                    | Previous work experience in Arbitration and other forms of ADR, Constitutional and Judicial review, Employment and Labour Litigation, Commercial Law or Consultancies/ Advise on any of the above areas. | 200        |                        |   |   |   |   |
| 2                                                    | Provide letters of reference from government ministries/departments to demonstrate relevant experience working with Government Agencies                                                                  | 100        |                        |   |   |   |   |
| <b>Total</b>                                         |                                                                                                                                                                                                          | <b>300</b> |                        |   |   |   |   |

### Technical Evaluation Criteria d: To provide proof of good standing with the Law Society of Kenya

| Summary of Technical Proposal Evaluation Forms |                                                                   | Score      | Company / Other Entity |   |   |   |   |
|------------------------------------------------|-------------------------------------------------------------------|------------|------------------------|---|---|---|---|
|                                                |                                                                   |            | A                      | B | C | D | E |
| 1.                                             | To submit a letter of good standing from the Law Society of Kenya | 100        |                        |   |   |   |   |
| <b>Total</b>                                   |                                                                   | <b>100</b> |                        |   |   |   |   |

## Annex 3

### *General Terms and Conditions for Services*

#### 1.0 LEGAL STATUS:

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP). The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNDP or the United Nations.

#### 2.0 SOURCE OF INSTRUCTIONS:

The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its services under this Contract. The Contractor shall refrain from any action that may adversely affect UNDP or the United Nations and shall fulfill its commitments with the fullest regard to the interests of UNDP.

**3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:**

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

**4.0 ASSIGNMENT:**

The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of UNDP.

**5.0 SUB-CONTRACTING:**

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of UNDP for all sub-contractors. The approval of UNDP of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.

**6.0 OFFICIALS NOT TO BENEFIT:**

The Contractor warrants that no official of UNDP or the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

**7.0 INDEMNIFICATION:**

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

**8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:**

**8.1** The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

**8.2** The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

**8.3** The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.



**8.4** Except for the workmen's compensation insurance, the insurance policies under this Article shall:

**8.4.1** Name UNDP as additional insured;

**8.4.2** Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the UNDP;

**8.4.3** Provide that the UNDP shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

**8.5** The Contractor shall, upon request, provide the UNDP with satisfactory evidence of the insurance required under this Article.

**9.0 ENCUMBRANCES/LIENS:**

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the UNDP against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

**10.0 TITLE TO EQUIPMENT:**

Title to any equipment and supplies that may be furnished by UNDP shall rest with UNDP and any such equipment shall be returned to UNDP at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to UNDP, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate UNDP for equipment determined to be damaged or degraded beyond normal wear and tear.

**11.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

**11.1** Except as is otherwise expressly provided in writing in the Contract, the UNDP shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP.

**11.2** To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

**11.3** At the request of the UNDP; the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and

transferring or licensing them to the UNDP in compliance with the requirements of the applicable law and of the Contract.

- 11.4** Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

**12.0 USE OF NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:**

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with UNDP, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of UNDP or THE United Nations, or any abbreviation of the name of UNDP or United Nations in connection with its business or otherwise.

**13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:**

Information and data that is considered proprietary by either Party and that is delivered or disclosed by one Party (“Discloser”) to the other Party (“Recipient”) during the course of performance of the Contract, and that is designated as confidential (“Information”), shall be held in confidence by that Party and shall be handled as follows:

- 13.1** The recipient (“Recipient”) of such information shall:

**13.1.1** use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,

**13.1.2** use the Discloser’s Information solely for the purpose for which it was disclosed.

- 13.2** Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 13, the Recipient may disclose Information to:

**13.2.1** any other party with the Discloser’s prior written consent; and,

**13.2.2** the Recipient’s employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:

**13.2.2.1** a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,

**13.2.2.2** any entity over which the Party exercises effective managerial control; or,

**13.2.2.3** for the UNDP, an affiliated Fund such as UNCDF, UNIFEM and UNV.

- 13.3** The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- 13.4** The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General.
- 13.5** The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 13.6** These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

#### **14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

- 14.1** In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the UNDP, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the UNDP of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the UNDP shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.
- 14.2** If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the UNDP shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.
- 14.3** Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
- 14.4** The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which the UNDP is engaged in, preparing to engage in, or disengaging from any

peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract..

## **15.0 TERMINATION**

- 15.1** Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 (“Arbitration”), below, shall not be deemed a termination of this Contract.
- 15.2** UNDP reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case UNDP shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.
- 15.3** In the event of any termination by UNDP under this Article, no payment shall be due from UNDP to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.
- 15.4** Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the UNDP may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UNDP of the occurrence of any of the above events.

## **16.0 SETTLEMENT OF DISPUTES**

- 16.1 Amicable Settlement:** The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.
- 16.2 Arbitration:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether

tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim Measures of Protection”) and Article 32 (“Form and Effect of the Award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

## **17.0 PRIVILEGES AND IMMUNITIES:**

Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

## **18.0 TAX EXEMPTION**

**18.1** Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter-alia that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately consult with the UNDP to determine a mutually acceptable procedure.

**18.2** Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the UNDP before the payment thereof and the UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

## **19.0 CHILD LABOUR**

**19.1** The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.

**19.2** Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, at no cost to UNDP.

## **20.0 MINES:**

**20.1** The Contractor represents and warrants that neither it nor any of its suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.

**20.2** Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNDP.

## **21.0 OBSERVANCE OF THE LAW:**

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

## **22.0 SEXUAL EXPLOITATION:**

**22.1** The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its employees or any other persons who may be engaged by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all appropriate measures to prohibit its employees or other persons engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. The Contractor acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of this representation and warranty shall entitle UNDP to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

**22.2** The UNDP shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

## **23.0 AUTHORITY TO MODIFY:**

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against UNDP unless provided by an

amendment to this Contract signed by the Contractor and jointly by the UNDP Authorized Official.